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Ronald L. Grudziecki			COLE, ELIZABETH M	
BURNS, DOANE, SWECKER & MATHIS, L.L.P.				
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RECORD OF ORAL HEARING  
UNITED STATES PATENT AND TRADEMARK OFFICE  

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte ANETTE BUSCHKA,  
PETER BLOMSTROM,  
and TOMAS BILIGREN

Appeal 2008-1467  
Application 09/870,517  
Technology Center 1700

Oral Hearing Held: April 17, 2008

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and  
KAREN M. HASTINGS, Administrative Patent Judges

ON BEHALF OF THE APPELLANTS:

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1                   The above-entitled matter came on for hearing on Thursday,  
2 April 17, 2008, commencing at 10:43 a.m., at the U.S. Patent and Trademark  
3 Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A. Brown,  
4 Notary Registration No. 7066896, Notary Public.

5                   THE CLERK: Calendar Number 47, Mr. Boone.

6                   JUDGE KIMLIN: Good morning, Mr. Boone.

7                   MR. BOONE: Good morning. How are you?

8                   JUDGE KIMLIN: Fine, thank you.

9                   MR. BOONE: Just as some general background, the major  
10 subject matter of the invention is that cellulose mat is used in absorbent  
11 products. An absorbent mat and, in general, it was recognized in the art that  
12 cellulose mat was too weak to operate by itself. So there was a need for a  
13 reinforcing mat typically of long fibers.

14                   And the primary reference being applied by the examiner is  
15 Matsamura. Basically recognizes that prior to Matsamura this need for  
16 cellulose and this long-fiber reinforcing mat was needed. Matsamura  
17 teaches -- well, what was done was to laminate them together. When you  
18 laminate them together, it requires a lot of adhesive, and you get a very  
19 thick, unwieldy product.

20                   Matsamura looks at that and says the solution is to take a  
21 product where the long fibers are formed and then aired off, blown down  
22 onto a wire to form a sort of random pattern of long fibers and then blow the  
23 short cellulose fibers on top of that.

24                   The reference talks about a number of reasons in terms of  
25 speed, efficiency, cost for their solution. But as they do it, they mention that  
26 while it overcomes to them was the prior art of this large adhesive layer,  
27 you'll still require some adhesive to do it. So that is what the examiner then

1 is applying, this Matsamura reference.

2                   The examiner comments that one skilled in the art would take  
3 and substitute for what Matsamura teaches an air-doffing apparatus card,  
4 which is essentially the Fehrer card in the Fehrer reference. The examiner  
5 says why would you do that? It is obvious. It would simplify the process of  
6 Matsamura and relies, in essence, out of context on the fact that Matsamura  
7 says using a carded lap.

8                   However, it is very clear in Matsamura that it is relying on this  
9 lickerin and the fact that the lickerin provides this random lap. There is no  
10 sort of simplification of the process by using the Fehrer card. It is not a  
11 simplification; it is a complete change of the process. It presents an entirely  
12 different product. It is formed in an entirely different manner.

13                   And with that, with what the claimed invention is, having not  
14 fully briefed, you know, this with KSR in mind, there is the unpredictable  
15 result that no binder is necessary.

16                   With the air-doffing apparatus claimed in the present invention,  
17 that there is, in effect, this very porous gauze layer that can accept the  
18 cellulose without any binder. And that is -- you know, it was unpredictable  
19 that you could do this.

20                   You could get this product -- that, you know, you completely  
21 overcome any of the inherent problems with using binders -- the cost, the  
22 effect on the product.

23                   And with that, there is, you know, it is sort of -- the  
24 combination is unpredictable and then the fact the change being suggested to  
25 Matsamura is not a simplification. It is not taking the Matsamura process  
26 and refining it. It is a complete change to it going against what Matsamura  
27 is teaching of kneading and requiring a randomly laid web, which is what is

1 provided by a lickerin.

2 JUDGE HASTINGS: Fehrer talks about when he cards it, he  
3 does get a uniform deposition of the fibers on the surface. I know in your  
4 brief you say that carding is always going to be an aligned fiber versus  
5 lickerin should always be random.

6 So the uniform distribution here -- the uniform deposition in  
7 Fehrer, he never talks about an aligned fiber in Fehrer. He says it is  
8 uniform. It is your belief it is inherent it is an aligned fiber?

9 MR. BOONE: Yes. That is an issue of the carding anyway. It  
10 has, essentially, tongs on there separating the fibers and by the nature of the  
11 drum spinning, it is inherently pulling the fibers in one direction to align  
12 them. That is something Matsamura recognizes as well with a few  
13 comments and the background of Matsamura.

14 JUDGE HASTINGS: From the reference evidence, do you  
15 believe that it is known in the art to use either type of apparatus to form a  
16 non-woven web?

17 MR. BOONE: Of one type it would be known. This  
18 combination of with the cellulose, no.

19 JUDGE HASTINGS: The examiner – regarding your point  
20 about the sufficient bonding, the examiner does apply a third reference in  
21 this combination, and her position is that it would have been *prima facie*  
22 obvious to replace the adhesive bonding that is necessary in the primary  
23 reference with some mechanical interlocking.

24 MR. BOONE: Yes, the examiner does. That is sort of  
25 overlooking that if one did that with the Matsamura process, Matsamura  
26 would still be doing this without an air-doffing apparatus card.

27 And it is, in essence, a product-by-process claim requiring this

1 apparatus to do this, but that is what it gives you is a very specific type of  
2 mat and that is something that with Matsamura -- essentially, they're poking  
3 in through the things to get interlocking. It is how they're operating.

4 Matsamura, you're not going to do that. You use binder. It is  
5 very clear. Even if you somehow were to do, it is still a different process.  
6 You still have to use this Fehrer card or a card of the Fehrer nature, and that  
7 is something I think is very clear that Matsamura -- it is a change in the  
8 principle of operation. Matsamura teaches away from anything of that  
9 nature.

10 Are there further questions? It is one of these where I think this  
11 is a straightforward issue where it falls. I think, in my opinion, a poorly  
12 crafted rejection where Matsamura just -- this is not a change that one skilled  
13 in the art would make.

14 I think there are very clear laws to support. This is a change-in-  
15 principles operation and the claimed invention has an unpredictable result.

16 JUDGE KIMLIN: And you are claiming a product claim here?

17 MR. BOONE: Yes, it is a product claim.

18 JUDGE KIMLIN: And the basic distinction between this  
19 product and the product that would be produced by the primary reference is  
20 what again?

21 MR. BOONE: In the primary reference, Matsamura, they'll  
22 take the embodiments primarily being asserted. They'll first take a lap of  
23 these long fibers, and they'll take that, put it through a lickerin, and that  
24 gives you this random gauze layer, and then on top of that they blow on  
25 cellulose.

26 What the claimed invention is, instead of this lap lickerin  
27 process, they'll use a Fehrer card to get this porous-penetrable gauze layer

1 and on top of that they blow the cellulose.

2 JUDGE KIMLIN: And your argument that it wouldn't be  
3 obvious to replace the random orientation with the known alignment type is  
4 why?

5 MR. BOONE: Based on the art, it is a change in the principle  
6 of operation. The art teaches that you need the lickerin to get, you know,  
7 proper quality.

8 JUDGE KIMLIN: Does the primary reference, is it fair to say  
9 that it teaches it is necessary or that is just a way to do it?

10 MR. BOONE: No, I think their -- obviously, I'm advocating,  
11 but I think it is pretty clear they teach that the lickerin and random alignment  
12 is something that they need to do. And it is one of these where --

13 JUDGE KIMLIN: Is there an advantage that you're losing by  
14 not having the random orientation the way the reference would have it?

15 MR. BOONE: I suppose as Matsamura points out, there may  
16 be, you know, the fibers are now going to be in the machine direction  
17 instead of in a cross-direction, so there may be a little less sturdiness in that  
18 direction, but the fibers are going to be so integrated you gain a little bit of  
19 that strength back.

20 JUDGE KIMLIN: The question would be, would one of  
21 ordinary skill in the art realize that you have advantages and disadvantages  
22 of using either of the two known ways of orienting the fibers.

23 MR. BOONE: Yes, but I guess it is one of those where one  
24 skilled in the art -- nobody was doing it. It wasn't thought that you could do  
25 this and get a good product.

26 You know, it is sort of to the benefit of being able to go away  
27 from any binder, which is -- that is a claim recitation, and that is something

1 that wasn't known. There wasn't a way to be able to get to something  
2 without any bonding agent through this, sort of, simple process. That was  
3 something that wasn't known.

4                   So any time you looked at the art, you just kind of discounted  
5 any suggestion of this. It wasn't teaching or suggesting that. It wasn't  
6 obvious. It was, all right, you do this and get this unpredictable result.

7                   JUDGE KIMLIN: All right. Any further questions?

8                   Thank you very much, Mr. Boone.

9                   MR. BOONE: All right.

10                  JUDGE KIMLIN: We will deliberate on that issue.

11                  MR. BOONE: Have a good day.

12                  Whereupon, the proceedings at 10:55 a.m. were concluded.